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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Amendment of Section 73.202(b)	)	
Table of Allotments	)	MB Docket No. 02-199
FM Broadcast Stations	)	RM - 10514
(Magnolia, Arkansas and Oil City, Louisiana)	)	

To: Office of the Secretary
Attn: The Commission

OPPOSITION TO APPLICATION FOR REVIEW

COLUMBIA BROADCASTING CO., INC.

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April 9, 2004

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SUMMARY

Columbia Broadcasting Co., Inc. ("Columbia") licensee of Station KVMA-FM, filed a petition to change its community of license from Magnolia, Arkansas to Oil City, Louisiana. The proper showings were made and the Commission staff approved the amendment to the FM Table of Allotments over the objection of Access.1 Louisiana Holding Company, LLC ("Access.1"), identifying itself as the licensee of several stations in the Shreveport market. Access.1 alleged that Columbia's real purpose was not to serve Oil City but to serve the Shreveport market. Columbia argued that this allegation was irrelevant to the rule making decision and speculative. The Commission staff agreed. Access.1 then filed a petition for reconsideration. While the reconsideration was pending, Columbia filed its application at a site near Oil City but later amended to a site which covers the Shreveport market. Access.1 then filed a supplement which in effect stated that its prediction was correct and Columbia misrepresented its real purpose. The Commission's staff asked for a showing of Oil City's independence from Shreveport. Columbia pointed out that it had already submitted the showing. On reconsideration the Commission's staff affirmed its decision to provide Oil City with a first local service, found no validity to Access.1's claims of misrepresentation and ruled that Columbia had filed the proper procedures. Access.1 has now filed for Commission review making the same claims that Columbia misrepresented its intent to serve Shreveport instead of Oil City and the Commission's policies in this area prohibit station moves into Urbanized Areas.

Columbia followed proper procedures, made the appropriate showings and demonstrated that there was nothing unusual or distinguishable about this case from the hundreds of change in city of license cases that the Commission has approved every year. Yet Access.1, without offering any case law in support, believes this case is different. In truth, Access.1 is asking the Commission to completely change its policy and prohibit stations from moving into Urbanized

Areas. The Commission can, of course, change its views on future cases but the case presented here complies with Section 307(b) and advances its principles by distributing frequencies in an equitable manner. Oil City is deserving of a first local service and Columbia desires to locate its transmitter site on an existing tower which its parent, Columbus Broadcasting LLC, owns. The Commission's technical requirements concerning city grade coverage and protection of other station's service areas are met. The Commission's policies and prior case law were met by the showings offered by Columbia. There was no misrepresentation because Access.1 had no knowledge of Columbia's plan and Columbia did not know it could use the transmitter site that it eventually specified until it actually filed its amendment. But, more importantly, even if it had known, Columbia had no reason to withhold this information because it would still be in compliance with all of the Commission's requirements. The Commission's staff's ruling on reconsideration proved this to be correct. The Commission should summarily deny Access.1's Application for Review as baseless, unsupported and, in so doing, recognize that Access.1 is simply trying to keep competition out of its market.

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OPPOSITION TO APPLICATION FOR REVIEW

Columbia Broadcasting Co., Inc. ("Columbia"), licensee of Station KVMA-FM, by its counsel, and pursuant to Section 1.115 of the Commission's Rules, hereby opposes the Application for Review filed by Access.1 Louisiana Holding Company, LLC ("Access.1") in the above-captioned proceeding.[1]

I. BACKGROUND

1. In this proceeding to amend the FM Table of Allotments, Columbia petitioned for, and was granted, a change of community of license of its Station KVMA-FM from Magnolia, Arkansas to Oil City, Louisiana. *Magnolia, Arkansas and Oil City, Louisiana*, 18 FCC Rcd 8542 (2003) ("*Report and Order*"). Access.1 petitioned for reconsideration of the *Report and Order*, which was denied. *Magnolia, Arkansas and Oil City, Louisiana*, 19 FCC Rcd 1553 (2004) ("*MO&O*"). Access.1 now requests review of the *MO&O*.

[1] Cumulus Licensing, LLC ("Cumulus") is the parent company of Columbia pursuant to a transfer of control transaction. *See* File No. BTCH-20020522AAH. Prior to consummation of the transaction, Cumulus and Columbia were joint parties to this proceeding. At all times in this proceeding, Cumulus and Columbia have had an identity of interest.

2. This case involves a routine change in community of license, no different from many hundreds of other cases that the Commission has processed and granted ever since establishing the procedures by which such changes can be accomplished. Indeed, except for the facts specific to the communities involved in this proceeding, nearly all of Access.1's objections to this reallotment were raised by parties in the generic proceeding and answered there by the Commission. Since that time, the Media Bureau has developed a substantial body of case law regarding such changes in community of license, and this case comports with that case law.

3. In *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990) ("*Community of License*"), the Commission established a procedure by which a station may change its community of license without exposing its license to competing expressions of interest. The Commission will grant a change in community of license provided that (i) the new allotment is mutually exclusive with the existing allotment; (ii) the original community will not be deprived of its only local service; and (iii) the new arrangement of allotments is preferred under the Commission's allotment priorities.[2] *Id.* In this case, the first two factors are not in dispute.

4. The third factor – the showing that a preferential arrangement of allotments will result – is usually a simple matter of comparing the numerical priorities advanced by the old allotment and the new allotment.[3] In this case, because Oil City previously had no local service,

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[2] In its petition for reconsideration, Access.1 had argued that because Magnolia will be served only by KVMA(AM), a daytime-only service, the community is effectively deprived of local service. However, this argument contradicts longstanding case law. *See MO&O* at footnote 3. Although Access.1 continues to press this point, it appears to recognize that its argument has no force. *See* Application for Review at 23-24.

[3] The FM allotment priorities are: (1) first fulltime aural service; (2) second fulltime aural service; (3) first local service; and (4) other public interest matters. Equal weight is given to priorities (2) and (3). *Revision of FM Assignment Policies and Procedures*, 90 F.C.C. 2d 88 (1982) The first two priorities are not at issue here, because all areas retain at least two fulltime aural reception services before and after the reallotment. *See MO&O* at ¶ 2.

allotting KVMA-FM to Oil City advances priority (3), the provision of a first local service. By contrast, retention of the KVMA-FM allotment in Magnolia advances priority (4), other public interest matters, because Magnolia already has local service. Therefore, the third factor is met in this case, and the change in community of license was properly presented. This was the analysis the Media Bureau conducted in the *Report and Order*, granting the reallotment of KVMA-FM from Magnolia to Oil City. It was a simple analysis, and undeniably correct.

5. However, there is another step in this process. The grant of a change in the FM Table of Allotments amends Section 73.202(b) of the Commission's Rules by allotting a channel to a new community. It does not confer operating authority. To obtain the authority to operate KVMA-FM at Oil City, the licensee is required to file an application for a construction permit on Form 301. *See Report and Order* at ¶ 9(a) (ordering the filing of an application within 90 days). The implementing application for KVMA-FM was filed on June 10, 2003, and amended on July 17, 2003. While complying with the licensee's obligation to serve Oil City, the applied-for facilities will also place a signal over the Shreveport Urbanized Area. This is, of course, why Access.1 opposes the reallotment. With seven of the top 20 radio stations in Shreveport, Access.1 is the market leader, and its market share could be diluted by KVMA.

6. When a radio station seeks to relocate to a suburban community located outside an Urbanized Area but close enough that a signal would cover more than half of the Urbanized Area, the Commission conducts an analysis to ascertain whether the proposed city of license is independent of the central city in the Urbanized Area and thereby deserving of a first local service. *See Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995). The purpose of this analysis is to avoid the "wholesale migration of stations from rural to urban areas." *See Community of License*, 5 FCC Rcd at 7096. The inquiry is based on the factors set

forth in *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988). By ensuring that the new community has the requisite degree of independence, the Commission avoids giving a first local service preference to any community that is, in effect, a mere extension of the urbanized area. *See Community of License*, 5 FCC Rcd at 7096.

7. The Media Bureau did not conduct a *Tuck* analysis in the *Report and Order*, because none was required. Oil City is located entirely outside the U.S. Census 2000 boundaries of the Shreveport Urbanized Area, and the fully-spaced allotment reference coordinates that Columbia was required to specify as a condition for obtaining the Oil City allotment are far enough from Shreveport that a station at those coordinates would not put a signal over any appreciable amount of the Shreveport Urbanized Area. However, once the amendment to the implementing application was filed, which specified a different set of coordinates from which 100 percent coverage of the Urbanized Area could be obtained, it was within the Bureau's discretion to require a demonstration of Oil City's independence from Shreveport.

8. Columbia provided the *Tuck* showing.[4] The Media Bureau reviewed the material and held that Oil City has the requisite degree of independence from Shreveport that it should not be attributed with the other Shreveport stations. *MO&O* at ¶¶ 6-7. As a result, Oil City is deserving of its first local service, which affirms the Bureau's decision in the *Report and Order* that the relocation of KVMA-FM from Magnolia to Oil City is a favorable arrangement of allotments. Access.1 did not challenge Oil City's independence from Shreveport.[5] Because the

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[4] In the *Report and Order*, the Bureau held that the proper forum for considering *Tuck* issues would be in the context of the implementing application. *See Report and Order* at 3. Columbia submitted its *Tuck* showing in that proceeding. *See Opposition to Informal Objection*, filed October 1, 2003. When Access.1 also raised the issue in its Petition for Reconsideration in the rule making, Columbia submitted the *Tuck* information in that proceeding as well. *See Opposition to Petition for Reconsideration*, filed July 29, 2003. In each case, however, the *Tuck* showing was essentially a reorganization in the *Tuck* format of information already in the record.

[5] On July 29, 2003, Access.1 submitted an untimely and unauthorized supplement which, for the first time, questioned Columbia's *Tuck* showing. The Bureau correctly refused to accept the supplement. Access.1 has

Bureau's findings were based on uncontroverted record evidence, the *MO&O*, like the *Report and Order*, clearly was correctly decided.

II. DISCUSSION

9. Access.1 presents a list of seven questions for review, only one of which has any direct bearing on the decision in this case. The first three questions revolve around allegations of misrepresentation and lack of candor. While these are serious charges, they are not supported by any evidence. In fact, Columbia has at all times acted in accordance with the Commission's rules and policies, and have openly and forthrightly advocated its position before the Commission. These questions are discussed in Sections A below.

10. Access.1's fourth question asks "Did the Bureau appropriately apply the Commission's Community of License Policy in this proceeding?" That question is answered in the affirmative in Section B below. Access.1's last three questions revolve around the relevance of the Commission's allotment policies *in general*, without any specific reference to the facts of this case. But since this case was correctly decided, it does not support Access.1's argument that the process is flawed. These questions are discussed in Section C below.

A. Access.1's Accusations of Misrepresentation and Lack of Candor are Unfounded and Immaterial.

11. Three of Access.1's "questions presented" accuse Columbia of misrepresentation and lack of candor.[6] These accusations are unfounded. In addition, even if Access.1 were correct, and the Bureau had additional information before it when it decided the *Report and*

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resubmitted that supplement with its Application for Review, but the Commission is barred from considering it. *See* discussion, *infra*.

[6] The questions are "Did the Bureau Permit Columbia to Engage in Misrepresentation and Lack of Candor, Resulting in an Abuse of the Commission's Reallotment Policies? Do the Bureau's Procedures for Evaluating Reallotment Petitions Adequately Protect Against Abuse of the Reallotment Policies, or do they Permit, and Encourage, Misrepresentation and a Lack of Candor? Should The Commission's Community of License Policy Be Amended to Address the Abuse of the Commission's Policy Demonstrated in this Proceeding?" Application for Review at 4. Since the answer to the first question is "no," the other two, which beg the question, are moot.

Order, the Bureau's decision would have been the same. Therefore, Access.1 fails to state a claim upon which relief can be granted.

12. In its comments filed in response to the *Notice of Proposed Rule Making* in this proceeding, Access.1 contended that if the reallotment of KVMA-FM from Magnolia to Oil City were granted, Columbia planned to apply for facilities that would be capable of serving Shreveport. Indeed, Access.1 speculated that the transmitter site would be on "a tower northwest of Shreveport" owned by Cumulus. Comments of Access.1 in MB Docket No. 02-199, at 6. As discussed above, the Bureau properly held that these issues were outside the scope of the proceeding. It is well-settled that a station's eventual transmitter location is not considered in allotment proceedings. *See Warrenton, North Carolina et. al.*, 13 FCC Rcd 13889 (1998); *Oraibi and Leupp, Arizona*, 14 FCC Rcd 13547 (1998).

13. Both the Bureau and Columbia used the term "speculation" to describe this line of argument. It was speculation because Access.1 was merely guessing. In fact, neither Columbia nor Cumulus knew at that time where the eventual location of the KVMA-FM transmitter would be. However, even if they had known for certain, it would not have converted Access.1's guesswork into anything other than speculation. Access.1 did not have any knowledge of Cumulus' and Columbia's plans.

14. Access.1's actual knowledge of the KVMA-FM transmitter site location came with the filing of the KVMA-FM implementing application.[7] That application specified a different location – not the tower Access.1 had guessed would be the eventual location of KVMA-FM. Cumulus did not serve a copy of the application or the amendment on Access.1,

[7] The application was filed in Cumulus' name with the consent of Columbia.

because there is nothing in the Commission's Rules requiring such service. The application and amendment were placed on public notice, and then became a matter of public knowledge.

15. Access.1's claims to find a "pattern of misrepresentation and lack of candor" in this sequence of events. *See* Application for Review at 14. But this claim is wholly unsupported. In particular, Access.1 objects to (i) the use of the term "speculation" to describe what was obviously speculation at the time; (ii) the lack of service of an application that was not required to be served and shortly became public; and (iii) the use of a two-step process (petition for rule making followed by implementing application) that is mandated by the Commission's Rules. *Id.* at 12-13. These are obviously frivolous contentions. What Access.1 calls a "scheme" to "evade Bureau evaluation," *see* Application for Review at 13, is nothing more than the established policy for obtaining a change in community of license and applying for the resulting allotment.

16. Access.1 seems to suggest that because Columbia knew that it planned to locate its facilities close enough to the Shreveport Urbanized Area, that it should have filed the *Tuck* showing with the original petition. However, Columbia had not completed its engineering plans at the time it filed the petition for rule making for Oil City, and thus is could not have specified the eventual KVMA-FM transmitter location in the petition for rule making.

17. Indeed, the eventual tower site was not even known until after the implementing application was filed. That was the reason an amendment was needed. The rules governing transmitter site locations are different in rule making and application proceedings. At the rule making stage, a proponent must offer a hypothetical transmitter site reference point that is fully spaced under Section 73.207. In this case, these spacings mandated the specification of a transmitter site located some distance from Shreveport. However, at the application stage, an

applicant may take advantage of the closer spacings of Section 73.215.[8] Therefore, the petition for rule making and the *Report and Order* would have been unchanged. While the Media Bureau might have requested a *Tuck* showing before issuing the *Report and Order*, it would merely have reached its eventual conclusion regarding Oil City's independence earlier. Simply put, Access.1 has not, and cannot, allege a claim that would have any effect on the outcome of this case. Similarly, Columbia would have had no reason to withhold an intention to locate the eventual transmitter site in or near Shreveport. The only effect would have been to demonstrate independence with a Tuck showing which Columbia did provide anyway.

B. The Bureau Appropriately Applied the Commission's *Community of License* Policy in This Proceeding.

18. Access.1 asks, "Did the Bureau Appropriately Apply the *Commission's Community of License* Policy in this Proceeding?" Application for Review at 4. The answer is yes. As discussed above, *Community of License* sets forth the criteria by which a station can change its community of license without exposing its license to new expressions of interest. Those criteria were fairly and accurately applied in this case. Access.1's contention to the contrary is based on a misreading of case law and a misunderstanding of the procedures applied in this case.

19. Access.1 states that "the clearly articulated objective of the Commission in *Community of License* was to prevent the migration of rural stations to urbanized areas." *Application for Review at 11, citing Community of License*, 4 FCC Rcd at 4873. Access.1 is wrong. That is not an accurate representation of the Commission's stated purpose. Rather, the Commission's objective was to encourage "changes to the tables of allotments that would result

[8] As it turned out, Columbia did not have enough information concerning use of the existing tower that it specified in its July 17, 2003 amendment. Otherwise it would have applied for that site when it submitted its application on June 10, 2003.

in a better overall arrangement of allotments." 4 FCC Rcd at 4872. In doing so, the Commission recognized that "an artificial or purely technical manipulation" of its policies could undermine its allotment priorities. 5 FCC Rcd at 7096. However, the Commission's guard against such manipulation is to apply a *Tuck* analysis to any proposed relocation from an underserved rural area to a well-served urban area. *Id.* If the urban community is a bona fide, independent community, then it deserves a first local service preference. *See also Community of License*, 4 FCC Rcd at 4873 ("We do not believe that [a rural to urban] move necessarily constitutes an abuse of process so long as the new community is preferable to the original community under our allotment criteria"); *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352, 10354 (1995) (this approach "provid[es] stations with the opportunity to change their communities of license if this would serve the public interest"). To do anything else would be to unfairly deprive urbanized communities of radio station allotments, in contravention of Section 307(b).[9]

20. That is precisely the analysis that the Media Bureau performed in this case. It applied a *Tuck* analysis to determine that Oil City is independent of Shreveport. Having made that decision, based on uncontroverted evidence, the Commission properly awarded Oil City a first local service preference. Therefore, it properly applied its *Community of License* policy in this case.

21. Access.1 seeks, for the first time in this proceeding, to argue the merits of Columbia's *Tuck* showing. *See* Application for Review at 19-20 and Supplement thereto. However, Section 1.115(c) of the Commission's Rules bars the Commission from considering this material, because the Media Bureau has not had an opportunity to consider it. Moreover, the

[9] Section 307(b) of the Communications Act requires the Commission to "provide a fair, efficient, and equitable distribution of radio services" to the various communities. 47 U.S.C. § 307(b). The Commission expressly based its Community of License decisions on Section 307(b). *Community of License*, 5 FCC Rcd at 7095.

Supplement exceeds the page limit prescribed under the rules and is therefore ineligible for consideration.

22. Access.1 originally submitted this material in a late-filed, unauthorized "supplement" to its Petition for Reconsideration. The Supplement was filed more than a year after the deadline for petitions for reconsideration in this proceeding, with no explanation why it was not submitted previously. The Bureau correctly refused to accept the unauthorized supplement. *See MO&O* at note 2. However, because the Bureau has not considered this information, the Commission cannot consider it in the context of an application for review. Section 1.115(c) of the Commission's Rules states that "No application for review will be granted if it relies on questions of fact or law upon which the designated authority has been afforded no opportunity to pass." 47 C.F.R. § 1.115(c). This bars the Commission from considering new facts that the Media Bureau has not considered. *See Hispanic Information and Telecommunications Network*, 19 FCC Rcd 814 (2004). Submitting material in an untimely and unauthorized supplement as Access.1 attempted to do in this case does not afford the Media Bureau an opportunity to pass upon it. In effect, Access.1's unexcused tardiness in bringing this information to the Bureau's attention forever bars its consideration.

23. Access.1 is also in flagrant violation of another applicable procedural rule, which prevents the Commission from considering its *Tuck* arguments. An Application for Review is limited to 25 pages in length. 47 C.F.R. § 1.115(f). Access.1's Application for Review contains a "Supplement" which begins at page 26 and continues for another 8 pages. This material contains additional legal argument, and is not the type of factual supplement or declaration that does not count towards the page limit. *See* 47 C.F.R. § 1.48. It is analogous to a pleading

incorporated by reference, which does count towards the page limit. *See Capitol Paging, Inc.*, 11 FCC Rcd 3282 (1996). Accordingly, Access.1's "Supplement" must be stricken from the record.

24. Even if the Commission were to consider Access.1's Supplement and new *Tuck* arguments, it should still conclude that Oil City is independent of Shreveport. The Bureau found that Oil City met *Tuck* Factor 1 (percentage of working-age residents who work in the community; Factor 2 (newspapers and other media), Factor 3 (distinct history and identity), Factor 4 (elected government), Factor 5 (post office and zip code), and Factor 8 (fire and police protection). Factors 6 (businesses, medical facilities, mass transit) and 7 (advertising market) fell on both sides. Nearly all of the information Access.1 seeks to present was already taken into account in the Bureau's analysis, such as the part-time status of Oil City's elected officials, and Oil City's lack of medical facilities and mass transit, lack of a separate telephone book, and lack of its own daily newspaper (the Bureau credited Oil City with media outlets in nearby communities other than Shreveport). The fact that some of Oil City's services are provided by Caddo Parish, as Access.1 points out, actually works in favor of Oil City's independence, because those services are provided independently of Shreveport. By contrast, in *Greenfield and Del Rey Oaks*, 11 FCC Rcd 12681 (1996), cited by Access.1, the community failed *Tuck* Factors 3, 5, 6, 7, and 8. Therefore, that case provides no guidance here.

C. The Commission's *Tuck* Analysis is Not Arbitrary and Capricious.

25. The remaining three questions presented by Access.1 request that the Commission find the *Tuck* analysis, as it is applied in connection with community of license changes in general, to be arbitrary and capricious.[10] These issues do not directly relate to this case, which

[10] The questions are "Should the Commission Review and Clarify its Community of License Policy? Is the Commission's Tuck Analysis Consistent with the Commission's New Definition of Radio Markets Utilizing Arbitron Market Definitions? Is the Commission's Tuck Analysis Legally Supportable Or Has It Become,

was a clear and straightforward application of *Community of License* and related case law. Instead, they question the validity of the Commission's entire approach to cases like this one. These issues have been raised and responded to before.

26. Access.1 claims that the Commission's policies amount to an abuse of discretion. Application for Review at 23. This is a recycled argument, no more valid today than it was in the past. In its *Community of License* deliberations, the Commission heard from commenters that the new procedure "may facilitate abuses of process by rural licensees desiring to serve large urban areas." *Community of License*, 4 FCC Rcd at 4873. The answer then, as now, is that it is not an abuse of discretion to relocate a station from a rural community to an urban community, as long as the new community is preferable to the old community. *Id.* The flexibility to change community of license will inevitably lead to the removal of some service from some rural communities. *See id.*; *Headland, Alabama, supra*, 10 FCC Rcd at 10354. But the Commission cannot simply deny urban communities local service consistent with section 307(b). Instead, the Commission's policies are designed to prevent "wholesale migration" of stations out of rural areas, and they continue to do so.

27. Access.1 also alleges that the use of Arbitron markets for the purposes of applying the Commission's multiple ownership rules undermines the legitimacy of the *Community of License* policies. This argument is a non sequitur. The multiple ownership rules serve a different purpose than the allotment rules. Multiple ownership rules serve the principles of diversity (in viewpoint, outlet, programming, source, and minority ownership), competition, and localism. *2002 Biennial Regulatory Review -- Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications*

Arbitrary, Capricious, and An Abuse of Discretion?" Application for Review at 4. Since all three questions are variations on the same theme, they will be addressed together.

Act of 1996, 29 CR 564 (2003). By contrast, the allotment rules serve one purpose – to ensure that the mandate of Section 307(b) is met. They are concerned with the distribution of stations, not the ownership of stations. Thus, the Commission's decision to use Arbitron markets to place limits on ownership (which is currently stayed pending appeal), has no bearing on allotment policies.

28. In fact, it is the height of hypocrisy for Access.1 to claim that the Commission's *Community of License* policy does not work. Access.1's Shreveport operation is founded on the *Community of License* principles. Access.1 owns Station KDKS(FM), licensed to the tiny community of Blanchard, Louisiana (pop. 2,050), which is currently the top-ranked station in the Shreveport market.[11] It was allotted to Blanchard on the basis of a first local service preference, applying the principles of *Community of License*. *Blanchard, Louisiana and Stephens, Arkansas*, 7083 (1993), *app. for rev. denied*, 10 FCC Rcd 9829 (1995). Access.1's Station KBTT(FM), Haughton, Louisiana (pop. 2,792), is the third-ranked station in the Shreveport market. That allotment was made to Haughton on the basis of a first local service preference. *Haughton, Louisiana*, 2 FCC Rcd 4587 (1987). Having taken full advantage of the opportunity to serve an urbanized area, Access.1 wants to deny competitors the same opportunity.

III. CONCLUSION

For the foregoing reasons, the Commission should affirm the *Report and Order* and the *MO&O* in this proceeding. Columbia acted at all times with candor and in compliance with the rules. The relocation of KVMA-FM complies with case law and the Commission's policies. Those policies continue to serve the goal of ensuring an equitable distribution of radio stations among the various communities.

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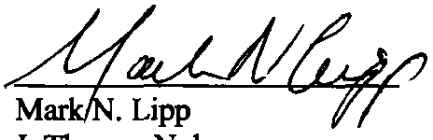
[11] All station rankings from BIA Radio Analyzer and Rankers Database (April 7, 2004).

Respectfully submitted,

COLUMBIA BROADCASTING CO., INC.

By: 

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April 9, 2004

CERTIFICATE OF SERVICE

I, Lisa M. Balzer, a secretary in the law firm of Vinson & Elkins, LLP., do hereby certify that I have on this 9th day of April, 2004, caused to be mailed by first class mail, postage prepaid, copies of the foregoing "Opposition to Application for Review" to the following:

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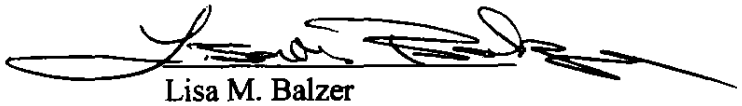

Lisa M. Balzer

* Hand Delivered